Completed acquisition by 3i Group plc of Uponor Limited

ME/3678/08

The OFT's decision on reference under section 22(1) given on 7 August 2008. Full text of decision published 14 August 2008.

Please note that the square brackets indicate figures or text which have been deleted or replaced in ranges at the request of the parties for reasons of commercial confidentiality.

PARTIES

1. **3i Group plc** (3i) is a venture capital and private equity investor listed on the London Stock Exchange. 3i is the parent of a number of companies including Rasmussen GmbH/Norma Group (Rasmussen), a German based company active in the manufacture of pipe connections for the automotive industry, and Enterprise plc (Enterprise), which is active in outsourced support services to the utility sectors, including the installation and maintenance of thermoplastic (PE) pipes.

2. **Uponor Limited** (Uponor)[1] designs, manufactures and supplies PE pipes and fittings in the UK and the Republic of Ireland, as well as fittings and specialist installation services. Uponor, prior to the transaction, was a subsidiary of the Uponor Corporation, a housing and environmental technology company based in Finland and listed on the Helsinki stock exchange. Uponor's UK turnover for the financial year to end 2007 was around £[100–125] million.

[1] Since the completion of the deal 3i has renamed Uponor to Radius Systems Limited.

TRANSACTION

3. On 18 June Inhoco 3445 Limited acquired the entire issued share capital of Uponor. Inhoco 3445 Limited's ultimate parent company is Inhoco 3443 Limited, a company which is majority owned (and controlled) by 3i Investors[2] and part-owned by an Executive Management Team of Uponor.

JURISDICTION

4. As a result of this transaction 3i and Uponor have ceased to be distinct. The UK turnover of Uponor exceeds £70 million, so the turnover test in section 23(1)(b) of the Enterprise Act 2002 (the Act) is satisfied. The OFT therefore believes that it is or may be the case that a relevant merger situation has been created.

5. The statutory deadline for the OFT to reach a decision in this case is 19 October 2008 and the administrative target deadline is 12 August 2008.

MARKET DEFINITION

6. The parties are active in the manufacture and supply of PE pipes and the installation and maintenance of PE pipes.

Product scope

PE pipes

7. For the manufacture and supply of PE pipes, the parties submitted that given that there are no (or at least negligible) overlaps between them it is not necessary for the OFT to examine the question of product market in detail. However, the parties considered that the supply of pipes to all utilities formed a single market since there is considerable supply-side substitution across the utilities.

[2] 3i Investors are various entities controlled by 3i Investments plc, an indirect wholly owned subsidiary of 3i.

8. In Wavin/Hepworth the OFT examined the supply of pipes and fittings to all utilities (it also segmented by above- and below-ground uses, and by plumbing uses).[3]

9. Pipes within the utility sectors can be made from plastics, ductile iron or steel. However, on the supply-side, the OFT has found that suppliers are generally not active in producing pipes of more than one type of material. Further, there are significant price differences between pipes made from different materials as well as differences in the performance of the pipe.

10. This is reflected in the demand for different types of pipes within the gas, water and telecommunications sectors. For example, besides PE pipes, steel is commonly used in the gas sector whereas ductile iron is also used in the water sector. In the telecommunications sector, plastics are predominately used. In all sectors, how substitutable pipes made from other materials are with PE pipes depends on various factors, the most important of which are the diameter of the pipe and the level of pressure that the pipe needs to withstand.

11. Therefore, evidence from both the supply- and demand-sides indicates that a cautious approach in examining this merger should exclude pipes made from materials other than PE.

12. Within the manufacture and supply of PE pipes, only Uponor and Aliaxis/GPS supply to all three utility sectors of gas, water and telecommunications. Pipes used in the water and, in particular, gas sectors require a stringent level of standards to be met. Competitors told the OFT that meeting these standards in the gas sector required costly testing of the products, which dampens supply-side substitution from the water and telecommunications sectors into the gas sector. Nonetheless, both competitors and customers told the OFT that PE pipes are essentially the same across all utility sectors with one third party telling the OFT that PE pipes have a wide range of uses across the utility sectors.

13. Given that the outcome of the competition assessment in this case does not depend on the product market definition of PE pipes the OFT has not found it necessary to conclude on it. The OFT has examined this merger on

[3] Anticipated acquisition by Wavin BV of Hepworth Building Products (Holdings) Limited, OFT decision of 4 February 2005.

the cautious basis of PE pipes only supplied to individual utility sectors (water, gas and telecommunications).

Installation services

14. In terms of installation and maintenance services, the parties submitted that some utility companies have in-house installers which provide a constraint on external installers such as Enterprise. Some larger third parties supported this assertion. However, some customers told the OFT that they only consider undertaking an installation job in-house when using a third party installer is not cost effective (for example, when the project is located too far away) while other customers did not consider it feasible for them to shift these services in-house at all.

15. Third party comments to the OFT suggest that, unlike for the manufacture and supply of pipes, there is no specialisation in supplying installation and maintenance services according to the pipe type (by material from which it is made or by size of pipe). In addition, third parties told the OFT that suppliers can and do supply installation and maintenance services across the full range of utility sectors.

16. The OFT has not found it necessary to conclude on the product market since the outcome of the case is not dependent on it. Without prejudice to the possibility that the product market may be wider (including installation services for pipes made from all materials), the OFT has examined this merger on the basis of installation and maintenance of PE pipes supplied to all utility sectors.

Geographic scope

PE Pipes

17. In Wavin/Hepworth the OFT concluded that geographic market for the supply of pipes was national.

18. In the current case some customers told the OFT that they had considered sourcing PE pipes from outside the UK (one customer identified a supplier in Germany) although none actually do supply from abroad. However, one gas customer said that the UK standards for pipes make it difficult to source pipes from outside the UK.

19. Given the outcome of the competition assessment in this case does not depend on the geographic market definition of PE pipes supplied to utilities the OFT has not found it necessary to conclude on it. The OFT has examined this merger on a national basis.

Installation services

20. The parties submitted that the appropriate frame of reference of installation and maintenance services was national. All of the main suppliers supply their services on a national basis.

21. The OFT has not found it necessary to conclude on the geographic market but has assessed the merger on a national basis.

HORIZONTAL ISSUES

22. The parties do not overlap at the horizontal level to any significant extent.[4] Enterprise offers routine installation and maintenance services to utilities but outsources labour and expertise. Its share of supply to utilities in the UK is low (around 10 per cent). Uponor offers specialist (not routine) installation and maintenance services and its share is negligible. Third party customers contacted by the OFT did not consider Enterprise and Uponor to be competitors in this activity, and the parties submitted that other firms offering installation and maintenance services include large construction and support service companies such as Laing O'Rourke, Balfour Beatty, Skanska, McNicholas and Amec.

23. Therefore, the OFT does not consider that there exists a realistic prospect of the merger resulting in a substantial lessening of competition at the horizontal level and horizontal issues (whether unilateral effects or coordinated effects) are not considered further in this decision.

VERTICAL ISSUES

24. The merger is mostly vertical in nature although there is little vertical relationship between the parties themselves. Uponor supplies PE pipes to

[4] Rasmussen's activities in the UK utility sectors is negligible (sales of around £[<50,000] per year).

utility companies in the UK while Enterprise supplies PE pipe installation and maintenance services to utility companies in the UK.

25. The parties submitted that the merger will not result in upstream or downstream foreclosure.

26. The parties provided information to the OFT showing that in over [70–80] per cent of the cases in which Enterprise installs and/or maintains PE pipes it does not arrange the sourcing of the pipes (that is done by the customer). This was supported by third party customers, the majority of whom told the OFT that they generally source PE pipes and installation and maintenance services separately. In those small number of instances in which Enterprise does source PE pipes from Uponor, customers told the OFT that nothing prevented them from sourcing PE pipes and installation services separately.

27. On account of its low share of supply, Enterprise clearly does not have the ability to foreclose upstream suppliers of PE pipes in the event that it only sourced PE pipes from Uponor (or refused to install or maintain PE pipes supplied by an upstream rival).

28. When analysed by individual utility sectors, Uponor accounts for at least [70–80] per cent of the supply of PE pipes to gas companies. The other main supplier is Aliaxis/GPS. The potential harm to competition resulting from the merger is that Uponor would be able to leverage its strong position in the supply of PE pipes to the gas sector to reduce the level of competition in the downstream installation and maintenance activities. This would most likely be achieved by tying Enterprise's installation and maintenance services to the supply of its PE pipes.

29. However, the OFT considers Uponor would find it difficult to tie the customer to the aftermarket installation and maintenance services (which are not pipe or pipe supplier specific) without upfront contractual arrangements (at which point the customer could seek other suppliers in the same way as it currently could). Alternatively, Uponor could refuse to guarantee a PE pipe unless Enterprise installed and/or maintained it, which may have the same effect as tying. The OFT does not consider this to be feasible. Customers told the OFT that pipe standards in the gas industry are already very stringent and, although additional guarantees from the

manufacturer are sought, the standards could be relied upon in the absence of any guarantee.

30. What is more, since installers and maintainers are generally active in other utility sectors (the OFT considers that the product market is at least as wide as services to all utility sectors) foreclosure of downstream gas sector rivals is likely to be unsuccessful as the gas sector accounts for only around a third of installation and maintenance services in the total utilities market. As such the merger will not make Uponor able to increase prices to gas sector customers beyond which it can do already as the main supplier of PE pipes to the sector.

31. Third parties active in the gas sector are unconcerned about the merger.

32. No other individual utility sectors customers raised any potential vertical concerns.

THIRD PARTY VIEWS

33. Almost all third parties were unconcerned about the merger. The OFT received only one merger-specific concern which was that Enterprise may try to promote the use of Uponor PE pipes. This concern has been addressed above.

ASSESSMENT

34. The parties do not overlap at the horizontal level to any significant extent and therefore horizontal issues do not arise in this case.

35. Possible vertical concerns only arise in relation to the gas sector. However, there is currently little vertical relationship between PE pipe suppliers and installers as customers tend to acquire the pipes and the installation separately. This customer choice is likely to remain after the merger. The evidence before the OFT indicates that Uponor is unlikely to be able to foreclose downstream rivals in installation activities in the gas sector because it would find it difficult to tie in customers to the downstream activity. Customers do not consider such a strategy could be successful. Even if Uponor could tie in customers, it could not foreclose downstream rivals since they would still be able to switch to the gas sector from the neighbouring water and telecommunications sectors. As such, this merger

does not increase Uponor's ability to raise prices to gas sector customers beyond that which it already possesses.

36. Consequently, the OFT does not believe that it is or may be the case that the merger has resulted or may be expected to result in a substantial lessening of competition within a market or markets in the United Kingdom.

DECISION

37. This merger will therefore **not be referred** to the Competition Commission under section 22(1) of the Act.